

when doing business with other than the Government.

[48 FR 42240, Sept. 19, 1983, as amended at 63 FR 70268, Dec. 18, 1998; 65 FR 60544, Oct. 11, 2000; 68 FR 43856, July 24, 2003; 85 FR 11759, Feb. 27, 2020]

19.202-5 Data collection and reporting requirements.

Agencies shall measure the extent of small business participation in their acquisition programs by taking the following actions:

(a) Require each prospective contractor to represent whether it is a small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, women-owned small business, EDWOSB concern, or WOSB concern eligible under the WOSB Program (see the provision at 52.219-1, Small Business Program Representations).

(b) Accurately measure the extent of participation by small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in Government acquisitions in terms of the total value of contracts placed during each fiscal year, and report data to the SBA at the end of each fiscal year (see subpart 4.6).

(c) When the contract includes the clause at 52.219-28, Post Award Small Business Program Rerepresentation, and the conditions in the clause for rerepresenting are met—

(1) Require a contractor that represented itself as any of the small business concerns identified in 19.000(a)(3) prior to award of the contract to rerepresent its size and socioeconomic status (*i.e.*, 8(a), small disadvantaged business, HUBZone small business, service-disabled veteran-owned small business, EDWOSB, or WOSB status); and

(2) Permit a contractor that represented itself as other than a small business concern prior to award to rerepresent its size status.

[48 FR 42240, Sept. 19, 1983, as amended at 60 FR 48261, Sept. 18, 1995; 63 FR 70268, Dec. 18, 1998; 65 FR 60544, Oct. 11, 2000; 72 FR 36854, July 5, 2007; 74 FR 11825, Mar. 19, 2009; 76 FR 18309, Apr. 1, 2011; 85 FR 11759, Feb. 27, 2020]

19.202-6 Determination of fair market price.

(a) The fair market price shall be the price achieved in accordance with the reasonable price guidelines in 15.404-1(b) for—

(1) Total and partial small business set-asides, and reserves (see subpart 19.5);

(2) HUBZone set-asides (see subpart 19.13);

(3) Contracts utilizing the price evaluation preference for HUBZone small business concerns (see subpart 19.13);

(4) Service-disabled veteran-owned small business set-asides (see subpart 19.14).

(5) Set-asides for EDWOSB concerns and WOSB concerns eligible under the WOSB Program (see subpart 19.15).

(b) For 8(a) contracts, both with respect to meeting the requirement at 19.806(b) and in order to accurately estimate the current fair market price, contracting officers shall follow the procedures at 19.807.

[52 FR 38189, Oct. 14, 1987, as amended at 53 FR 43390, Oct. 26, 1988; 54 FR 46005, Oct. 31, 1989; 62 FR 51270, Sept. 30, 1997; 63 FR 35722, June 30, 1998; 63 FR 70268, Dec. 18, 1998; 69 FR 25276, May 5, 2004; 76 FR 18309, Apr. 1, 2011; 79 FR 61750, Oct. 14, 2014; 85 FR 11759, Feb. 27, 2020]

19.203 Relationship among small business programs.

(a) There is no order of precedence among the 8(a) Program (subpart 19.8), HUBZone Program (subpart 19.13), Service-Disabled Veteran-Owned Small Business (SDVOSB) Procurement Program (subpart 19.14), or the Women-Owned Small Business (WOSB) Program (subpart 19.15).

(b) *At or below the simplified acquisition threshold.* For acquisitions of supplies or services that have an anticipated dollar value above the micro-purchase threshold, but at or below the simplified acquisition threshold, the requirement at 19.502-2(a) to set aside acquisitions for small business concerns does not preclude the contracting officer from awarding a contract to a small business under the 8(a) Program, HUBZone Program, SDVOSB Program, or WOSB Program.

(c) *Above the simplified acquisition threshold.* For acquisitions of supplies

or services that have an anticipated dollar value exceeding the simplified acquisition threshold definition at 2.101, the contracting officer shall first consider an acquisition for the small business socioeconomic contracting programs (*i.e.*, 8(a), HUBZone, SDVOSB, or WOSB programs) before considering a small business set-aside (see 19.502–2(b)). However, if a requirement has been accepted by the SBA under the 8(a) Program, it must remain in the 8(a) Program unless the SBA agrees to its release in accordance with 13 CFR parts 124, 125, and 126.

(d) In determining which socioeconomic program to use for an acquisition, the contracting officer should consider, at a minimum—

(1) Results of market research that was done to determine if there are socioeconomic firms capable of satisfying the agency's requirement; and

(2) Agency progress in fulfilling its small business goals.

(e) Small business set-asides have priority over acquisitions using full and open competition. *See* requirements for establishing a small business set-aside at subpart 19.5.

[75 FR 14567, Mar. 16, 2011, as amended at 76 FR 18309, Apr. 1, 2011; 77 FR 12932, Mar. 2, 2012; 80 FR 38298, July 2, 2015; 81 FR 30439, May 16, 2016; 82 FR 4717, Jan. 13, 2017; 85 FR 11759, Feb. 27, 2020; 85 FR 27090, May 6, 2020]

Subpart 19.3—Determination of Small Business Size and Status for Small Business Programs

19.301 Representations and rerepresentations.

19.301–1 Representation by the offeror.

(a) To be eligible for award as a small business concern identified in 19.000(a)(3), an offeror is required to represent in good faith—

(1)(i) That it meets the small business size standard corresponding to the North American Industry Classification System (NAICS) code identified in the solicitation; or

(ii) For a multiple-award contract where there is more than one NAICS code assigned, that it meets the small business size standard for each distinct portion or category (*e.g.*, line item

numbers, Special Item Numbers (SINs), sectors, functional areas, or the equivalent) for which it submits an offer. If the small business concern submits an offer for the entire multiple-award contract, it must meet the size standard for each distinct portion or category (*e.g.*, line item number, SIN, sector, functional area, or equivalent); and

(2) The Small Business Administration (SBA) has not issued a written determination stating otherwise pursuant to 13 CFR 121.1009.

(b) An offeror is required to represent its size and socioeconomic status in writing to the contracting officer at the time of initial offer, including offers for—

(1) Basic ordering agreements (see 16.703); and

(2) Blanket purchase agreements (BPAs) issued pursuant to part 13.

(c) To be eligible for an award of an order under a basic ordering agreement or a BPA issued pursuant to part 13 as a small business concern identified in 19.000(a)(3), the offeror must be a small business concern identified in 19.000(a)(3) at the time of award of the order.

(d) To be eligible for an award under the HUBZone Program (see subpart 19.13), a HUBZone small business concern must be a HUBZone small business concern both at the time of initial offer and at the time of contract award.

(e) Multiple-award contract representations:

(1) A business that represents as a small business concern at the time of its initial offer for the contract is considered a small business concern for each order issued under the contract (but see 19.301–2 for rerepresentations).

(2) A business that represents as a small business concern at the time of its initial offer for a distinct portion or category as set forth in paragraph (a)(1)(ii) is considered a small business concern for each order issued under that distinct portion or category (but see 19.301–2 for rerepresentations).

(f) The contracting officer shall accept an offeror's representation in a specific bid or proposal that it is a small business unless (1) another offeror or interested party challenges the